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Attorneys for Plaintiffs
 THE LARYNGEAL MASK COMPANY LTD.
 and LMA NORTH AMERICA, INC.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

THE LARYNGEAL MASK COMPANY
 LTD. and LMA NORTH AMERICA, INC.,

Plaintiffs,

v.

AMBU A/S, AMBU INC., AMBU LTD.,
 and AMBU SDN. BHD.,

Defendants.

AMBU, INC.,

Counterclaimant,

v.

THE LARYNGEAL MASK COMPANY
 LTD. and LMA NORTH AMERICA, INC.,

Counter-Defendant

Civil Action No. 07 CV 1988 DMS (NLS)

**DECLARATION OF FREDERICK
 BERRETTA IN OPPOSITION TO AMBU'S
 EX PARTE REQUEST TO CONTINUE
 APRIL 14, 2008 ENE CONFERENCE**

Courtroom F, 1st Floor

Honorable Nita. L. Stormes

1 I, Frederick Berretta, declare and state as follows:

2 1. I am a partner in the law firm of Knobbe, Martens, Olson & Bear, LLP, counsel
3 of record for Plaintiffs The Laryngeal Mask Company Ltd. ("LMC") and LMA North America,
4 Inc. ("LMA NA") in this action. I submit this Declaration in Opposition to Defendants' Ex
5 Parte Request to Continue April 14, 2008 ENE Conference. The following statements are based
6 on my personal knowledge unless otherwise indicated.

7 2. On Friday, March 14, 2008, I sent a letter to John L'Estrange, the Ambu
8 defendants' designated local counsel, to inquire whether he would continue to represent
9 defendants following the disqualification of Finnegan Henderson and, if so, whether he intended
10 to start the Rule 26 process. Attached hereto as Exhibit 1 is a true and correct copy of my letter.
11 I received no response from Mr. L'Estrange, other than that he filed a Substitution of Counsel
12 on Monday, March 17, 2008, substituting in Fenwick & West ("Fenwick") as new counsel for
13 defendants.

14 3. On the morning of March 17, 2008, I received a voicemail message from
15 Charlene Morrow of Fenwick requesting I contact her about the case. I had a brief due on
16 another matter that day, so I was unable to return Ms. Morrow's call until late Monday
17 afternoon. At that time, Ms. Morrow asked for a 90 day continuance of the Early Neutral
18 Evaluation ("ENE") Conference, effectively pushing the conference from April 14 to mid-July.
19 I informed Ms. Morrow that LMA would not oppose a 30 day continuance, but that LMA was
20 unlikely to agree to a 90 day continuance. I told Ms. Morrow I would confer with the client and
21 get back to her as soon as possible.

22 4. At no time during my March 17, 2008 conversation with Ms. Morrow did she
23 indicate defendants planned to file an *ex parte* request to continue the ENE the following day.
24 Nor did she attempt to contact me again before filing the *ex parte*. Late on March 18,
25 defendants filed their *ex parte* request, which appears to request a 90 day continuance of the
26 ENE measured from the date of Fenwick's appearance in the case (i.e., 90 days from March 17,
27 2008 to mid-June) rather than a 90 day continuance of the ENE from April 14, 2008 to mid-
28 July. I was never informed of this alternative request prior to the filing of the *ex parte*.

1 5. On March 19, 2008, I again spoke to Ms. Morrow by telephone, seeking
2 clarification of Ambu's continuance request (as to the date from which to measure the requested
3 90 day continuance). She seemed confused about Ambu's request, indicating that her partner
4 Daryl Woo had filed the *ex parte*. During the call I reiterated that LMA would not oppose a
5 request to continue the ENE Conference by 30 days to mid-May. I also informed Ms. Morrow
6 that LMA had just recently come to the decision to dismiss one of the two asserted patents from
7 the case, United States Patent No. 5,303,697, substantially simplifying the case from
8 defendant's perspective. She requested a written proposal regarding the dismissal of the '697
9 patent and LMA is in the process of preparing that proposal. She did not indicate that Ambu
10 would withdraw its *ex parte* request for a 90 day continuance of the ENE.

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct.

13 Executed on March 20, 2008 in San Diego, California.

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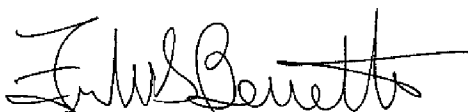

Frederick S. Berretta

EXHIBIT A

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

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San Diego CA 92101
Tel 619-235-8550
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www.kmob.com

Frederick S. Berretta
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March 14, 2008

VIA FACSIMILE


John L'Estrange, Esq.
WRIGHT & L'ESTRANGE
401 West A Street, Suite 2250
San Diego, CA 92101

Re: *The Laryngeal Mask Company Ltd and LMA North America, Inc. v. Ambu A/S, Ambu, Inc., Ambu Ltd., and Ambu Sdn Bhd.*
Civil Action No. 07 cv 1988 DMS (S.D. Cal)
Our Reference: LMANL.001L

Dear John:

As you know, the Court reset the ENE Conference in this matter for April 14, 2008, and the Local Patent Rules require a Rule 26(f) conference at least 21 days before that, or in this case by Monday, March 24, 2008. Now that Finnegan Henderson has been disqualified we are unsure whether your firm will continue to represent the Ambu defendants in this matter, whether you intend to start the Rule 26 process, or whether you are waiting for new counsel to appear. Please let me know at your earliest convenience.

Very truly yours,



Frederick S. Berretta

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EXHIBIT 1

PAGE 4

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TO: John L'Estrange, Esq.
 FIRM: WRIGHT & L'ESTRANGE
 FACSIMILE NO.: (619) 231-6710
 OUR REF.: LMANL.001L
 YOUR REF.:
 FROM: Fred Berretta
 OPERATOR:
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TO: John L'Estrange, Esq.
FIRM: **WRIGHT & L'ESTRANGE**
FACSIMILE No.: (619) 231-6710
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YOUR REF.:
FROM: Fred Berretta
OPERATOR:
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MESSAGE: SEE ATTACHED LETTER.

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202-640-6400**

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2008, I caused the foregoing **DECLARATION OF FREDERICK BERRETTA IN OPPOSITION TO AMBU'S EX PARTE REQUEST TO CONTINUE APRIL 14, 2008 ENE CONFERENCE** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the applicable registered filing users.

Darryl M. Woo
FENWICK & WEST LLP
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San Francisco CA 94104
dwoo@fenwick.com
T: 415-875-2300
F: 415-281-1350

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Dated: March 20, 2008


Megan Ptacin

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